

V & J Cleaners Co., and Frank Kimbrough, a sole proprietor d/b/a Touch of Magic Cleaners, and Frank Kimbrough, single employers and/or alter egos and Local 25, Service Employees International Union, AFL-CIO. Case 13-CA-27139

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On February 28, 1991, the National Labor Relations Board issued a Decision and Order, *inter alia*, ordering V & J Cleaners Co., and Frank Kimbrough, a sole Proprietor d/b/a Touch of Magic Cleaners, and Frank Kimbrough, an individual; single employer and/or alter egos (the Respondent), to offer immediate reinstatement to discriminatees Mary Williams and Veneta Allen and make them whole for losses suffered as a result of the Respondent's unfair labor practices.¹ On November 8, 1991, the Court of Appeals for the Seventh Circuit entered its judgment enforcing in full the backpay provision of the Board's Order.

A controversy having arisen over the amount of backpay due to the discriminatees, on September 30, 1992, the Regional Director for Region 13 issued a compliance specification and notice of hearing alleging the amount of backpay due under the Boards Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On October 12 and 22, 1992, the Respondent filed an answer and an amended answer, respectively, to the compliance specification.

On December 11, 1992, the General Counsel filed a motion to strike portions of Respondent's amended answer and for a partial summary judgment. On February 25, 1993, the Board issued a Supplemental Decision and Order granting the General Counsel's motion.²

Thereafter, on April 16, 1993, counsel for the Respondent executed an agreement whereby it agreed to withdraw its amended answer to the compliance specification and not to file an answer to the amended compliance specification which the Region subsequently issued on April 28, 1993.

Pursuant to this agreement, on May 12, 1993, the General Counsel filed with the Board a Motion for Summary Judgment. On May 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

¹ 301 NLRB 1152.

² 310 NLRB No. 74.

Ruling on Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent has agreed not to file an answer to the amended compliance specification. In the absence of such an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Mary Williams and Veneta Allen is stated in the amended compliance specification and will order payment of such amounts to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, V & J Cleaners Co., and Frank Kimbrough, a sole proprietor, d/b/a Touch of Magic Cleaners, and Frank Kimbrough, an individual; single employers and/or alter egos, Chicago, Illinois, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest and minus tax withholdings required by Federal and state laws:

Mary Williams	\$ 11,333
Veneta Allen	1,175

Dated, Washington, D.C. June 14, 1993

James M. Stephens,	Chairman
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Dennis M. Devaney,	Member
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John Neil Raudabaugh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD